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10/749,854	12/30/2003	Janko Budzisch	6570P055	9420
45062	7590	06/06/2007	EXAMINER	
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ART UNIT		PAPER NUMBER		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)
	10/749,854	BUDZISCH ET AL.
	Examiner	Art Unit
	Vitali Korobov	2155

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 22 February 2007.
 2a) This action is FINAL. 2b) This action is non-final.
 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-8, 10-18, 20-28 and 30 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) Claim(s) _____ is/are allowed.
 6) Claim(s) 1-8, 10-18, 20-28 and 30 is/are rejected.
 7) Claim(s) _____ is/are objected to.
 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.
 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)
 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
 3) Information Disclosure Statement(s) (PTO/SB/08)
 Paper No(s)/Mail Date _____

4) Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____.
 5) Notice of Informal Patent Application
 6) Other: _____.

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RESPONSE TO RCE

1. This Office Action is in response to an amendment filed on 02/22/2007. No claims were added or cancelled by this amendment. Claims 1, 3, 11, 13, 21 and 23 were amended. Accordingly, claims 1-8, 1018, 20-28 and 30 are currently pending and have been examined in this Office Action.

Continued Examination Under 37 CFR 1.114

2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous office action has been withdrawn pursuant to 37 CFR 1.114. The Applicant's submission filed on 02/22/2007 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

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3. Claims 1-3, 11-13, and 21-23 are rejected under 35 U.S.C. 102(e) as being anticipated by the U. S. Patent No. 6,522,995, issued to Conti et al., hereinafter Conti.

Regarding claim 1, Conti teaches a method, comprising: repeatedly receiving request messages at a testing application running on a server or servlet engine, said repeatedly receiving occurring during execution of a testing scenario, each of said request messages identifying the same set of software components that are: a) servable and/or invocable by said server or servlet engine; b) associated with the same said testing scenario; and c) used by a same business logic process within an IS infrastructure (Col. 2, lines 1-3 - load emulation; lines 15-19 - repeated requests by the user); and, said testing application, in response to each of said request messages in executing said testing scenario, performing the following: testing each of said one or more software components for availability and preparing and sending a response message that indicates availability or unavailability for each of said one or more software components (Col. 2, lines 19-25 - transaction availability; lines 26-30 - providing feed-back information) wherein at least one of said software components requires a login procedure for its availability test and each of said request messages include a userid for said login procedure (Col. 4, lines 41-43 and lines 50-52 - registration of users, assigning of user IDs).

Regarding claim 2, Conti teaches the method of claim 1 wherein at least one of said software components further comprises a web page and said testing for availability

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of said web page further comprises attempting to fetch said web page (Col. 3, lines 7-15 - receiving webpage data).

Regarding claim 3, Conti teaches the method of claim 2 wherein said web page's URL is identified in each of said request messages (Col. 3, lines 7-15 - receiving webpage data, which according to lines 24-29 is done using HTTP protocol, inherently using URL).

Claim 11-13 are rejected in view of the above rejection of claims 1-3. Claims 11-13 are essentially the same as claims 1-3, except that they set forth the invention as a machine readable medium rather than a method, as do claims 1-3.

Claim 21-23 are rejected in view of the above rejection of claims 1-3. Claims 21-23 are essentially the same as claims 1-3, except that they set forth the invention as a computing system rather than a method, as do claims 1-3.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4-8, 10, 14-18, 20, 24-28 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Conti in view of the U. S. Patent No. 6,973,627,

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issued to Appling, hereinafter Appling.

Regarding claim 4, Conti teaches the method of claim 1.

Conti does not explicitly teach or define a method further comprising creating a request object from the content of said request message with a request message class.

However, Appling in analogous art, directed to emulating a look and feel of an application program by configuring a graphical display of a website, teaches implementation of his invention in Javascript, XML and Java, latter being inherently an object oriented language, and therefore teaches a method further comprising creating a request object from the content of said request message with a request message class (Appling, col. 2, lines 57-61).

Therefore, it would have been obvious to one having ordinary skills in the art at the time the invention was made to incorporate the teachings of Appling regarding Javascript, XML and Java, into the teachings of Conti in order to enhance the capabilities of Conti's testing methods by making his invention platform independent and by taking advantage of additional features XML and Javascript have to offer compared to HTML. Modified in this manner Conti is hereinafter referred to as modified Conti.

Regarding claim 5, modified Conti teaches the method of claim 4 further comprising creating a scenario object from said request object with a scenario object class (Appling, col. 2, lines 57-61 - Java).

Regarding claim 6, modified Conti teaches the method of claim 5 further comprising creating a response message object with a response message class

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(Appling, col. 2, lines 57-61 - Java inherently implements groups of objects as classes).

Regarding claim 7, modified Conti teaches the method of claim 1 wherein said response message is an XML document (Appling, col. 2, lines 57-61 - XML).

Regarding claim 8, modified Conti teaches the method of claim 7 wherein each of said request messages is an XML document (Appling, col. 2, lines 57-61 - XML).

Regarding claim 10, modified Conti teaches the method of claim 1 wherein said testing of each of said one or more software components is performed by a servlet (Appling, col. 2, lines 57-61 - Java).

Claim 14-18 and 20 are rejected in view of the above rejection of claims 4-8 and 10. Claims 14-18 and 20 are essentially the same as claims 4-8 and 10, except that they set forth the invention as a machine readable medium rather than a method, as do claims 4-8 and 10.

Claim 24-28 and 30 are rejected in view of the above rejection of claims 4-8 and 10. Claims 24-28 and 30 are essentially the same as claims 4-8 and 10, except that they set forth the invention as a computing system rather than a method, as do claims 4-8 and 10.

5. **Examiner's note:** Examiner has cited particular columns and line numbers in the references as applied to the claims above for the convenience of the Applicants. Although the specified citations are representative of the teachings of the art and are applied to the specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the Applicants in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

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Response to Arguments

6. Applicants' arguments filed 02/22/2007 have been fully considered but they are not persuasive.

The Applicants argue – “*Therefore Conti fails to disclose the following claim element (emphasis added):*

repeatedly receiving request messages at a testing application running on a server or servlet engine, said repeatedly receiving occurring during execution of a testing scenario, each of said request messages identifying the same set of software components that are: a) servable and/or invokable by said server or servlet engine; b) associated with the same said testing scenario; and, c) used by a same business logic process within an IS infrastructure.”

The Examiner respectfully disagrees and refers the Applicants to the Abstract of Conti, which in part states the following (emphasis provided):

“Test scripts are provided to one or more test devices for simulating one or more web-based users for testing the web-based server.”

Examiner interprets this to mean that the same testing scenario, corresponding to the same business process may be run repeatedly over and over again.

The Applicants further argue – “*Moreover, the subject matter of the presented claims include the testing application receiving a userid for a login procedure of a business software component during execution of the testing scenario. Because Conti focuses on a stress test that simulates real-life workload demand on a web server,*

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the testing agents of Conti and/or security software running on the web server would invoke the logic procedure business software components - not the testing application of Conti (i.e., the database software). Consistent with this view, the login procedure the Examiner has identified at "Step 2" of Conti (See, Conti, Col. 4, lines 41-43 and 50-52) occurs before not during execution of the testing scenario of Conti. See, Conti, Col. 5, lines 62-63 (indicating the testing scenario starts at "Step 7").

The Examiner respectfully disagrees and refers the Applicants to col. 4, lines 23-24, where Conti states (emphasis provided):

"According to the invention, when a test is executed, the following steps are performed:

Conti then proceeds to list steps 1 through 7, which the Examiner interprets to mean that step 2 is part of the test execution.

Conclusion

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Applicant is reminded that in amending in response to a rejection of claims, the patentable novelty must be clearly shown in view of the state of the art disclosed by the references cited and the objection made. Applicant must show how the amendments avoid such references and objections. See 37 CFR § 1.111(c).

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Vitali Korobov whose telephone number is 571-272-7506. The examiner can normally be reached on Mon-Friday 8a.m. - 4:30p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Saleh Najjar can be reached on (571)272-4006. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Vitali Korobov
Examiner
Art Unit 2155

05/28/2007
VAK



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